

RECEIVED

AUG 15 2005

ROBERT H. SHEMWELL, CLERK  
WESTERN DISTRICT OF LOUISIANA  
SHREVEPORT, LOUISIANA

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
SHREVEPORT DIVISION

UNITED STATES OF AMERICA

CIVIL ACTION NO. 05-0830  
CRIMINAL NO. 94-50022-01

VERSUS

JUDGE DONALD E. WALTER

MARK K. CANNON

MAGISTRATE JUDGE HORNSBY

**O R D E R**

Before this Court is defendant Mark K. Cannon's ("Cannon") Motion to Vacate Sentence Pursuant to New Rule of Law [Doc. # 62] wherein defendant relies on *Blakely v. Washington*, 124 S.Ct. 2531 (2004). A Motion to Vacate Sentence is a § 2255 motion.

Cannon filed a previous § 2255 motion with this Court on December 5, 1997 [Doc. # 38]. This Court denied Cannon's motion on December 22, 1997 [Doc. # 42]. Cannon filed a second § 2255 motion on January 9, 1998 [Doc. # 43] which was denied on November 3, 1998 [Doc. # 51]. Cannon appealed the decision to the United States Court of Appeals for the Fifth Circuit. The appeal was denied and judgment affirmed on May 10, 1999 [Doc. # 56].

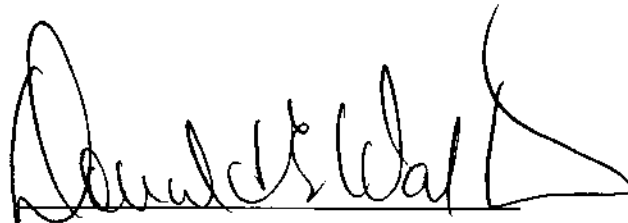
Pursuant to 28 U.S.C. § 2244(b)(3)(A), before Cannon may invoke this Court's jurisdiction to hear a successive § 2255 motion, he must "move in the appropriate court of appeals for an order authorizing the district court to consider the application." Because Cannon has not filed with the Fifth Circuit a § 2244(b)(3)(A) petition for authorization to file a successive habeas petition in district court, this Court lacks jurisdiction over the instant motion.

In addition, the United States Supreme Court in *United States v. Booker*, 125 S.Ct. 738 (2005) held that *Blakely, supra*, applies to the Sentencing Guidelines. However, the *Booker* Court

also determined that their holding would apply to "all cases on direct review." *Booker* at 769. In addition, the Fifth Circuit has ruled that *Booker* "does not apply retroactively on collateral review for purposes of a successive § 2255 motion." *In re Elwood*, 2005 U.S. App. LEXIS 7343 (5<sup>th</sup> Cir., 2005).

Accordingly, Cannon's Motion to Vacate Sentence Pursuant to New Rule of Law [Doc. # 62] be and is hereby **DENIED**.

**THUS DONE AND SIGNED** in Shreveport, Louisiana, this 12 day of July, 2005.

A handwritten signature in black ink, appearing to read "Donald E. Walter", written over a horizontal line.

DONALD E. WALTER  
UNITED STATES DISTRICT JUDGE